



## IFB No: 4419

**INVITATION:** Sealed bids, subject to the conditions herein stated and attached hereto, will be received at this office until **3:00 p.m. Central Time on November 29, 2021**, and then publicly opened for furnishing the services as described below for the **Mississippi Department of Human Services (MDHS)**.

**Building Security Access Control Hosting and Maintenance**

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### **Bidder Information**

Attachment A: Bid Form  
Attachment B: Cost Submission  
Attachment C: IFB Questionnaire  
Attachment D: References  
Attachment E: Contract Exceptions  
Attachment F: Standard Contract

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Bidder must submit bid and attachments to:

Evan Thiemann  
Technology Consultant  
Information Technology Services  
3771 Eastwood Drive  
Jackson, MS 39211  
(601) 432-8065  
evan.thiemann@its.ms.gov

To prevent opening by unauthorized individuals, your bid should be placed in a sealed envelope and plainly identified as follows:

SUBMITTED IN RESPONSE TO IFB NUMBER 4419  
due November 29 @ 3:00 p.m.  
ATTENTION: Evan Thiemann

  
David C. Johnson  
Executive Director, ITS

**INVITATION FOR BID NO. 4419  
BIDDER RESPONSE INFORMATION  
PROJECT NUMBER 46465**

This document contains general information for bidders responding to an Invitation for Bid issued by ITS.

1. Bidders are expected to examine all documents, forms, specifications, standard provisions, and all instructions. Failure to do so may result in the disqualification of the bidder's IFB response. The State is under the impression that responding Bidders have read and agree to all items in this IFB.
2. Any bid not received in writing at this office by the date and time specified will be declared a late bid. The State will not be responsible for any delays in delivery. It is solely the responsibility of the bidder that bids reach the opening on time. Any bid received after the date and time specified will be returned unopened.
3. Bids or alterations by fax, e-mail, or phone will not be accepted.
4. All bid openings are open to the public. The ITS staff will read the name of bidder responding, along with the total bid price. Bidders wishing to attend the bid opening at 3:00p.m. on the day bids are due may do so via telephone. Bidders may dial 888-822-7517 and use Access Code 994839.
5. ITS reserves the right to reject any bids, including those with exceptions, prior to and at any time during negotiations.
6. ITS reserves the right to waive any defect or irregularity in any bid procedure.
7. The Bidder may intersperse their response following each IFB specification but must not otherwise alter or rekey any of the original text of this IFB. If the State determines that the Bidder has altered any language in the original IFB, the State may, in its sole discretion, disqualify the Bidder from further consideration. The IFB issued by ITS is the official version and will supersede any conflicting IFB language submitted by the Bidder.
8. The Bidder must conform to the following standards in the preparation of the Bidder's bid:
  - 8.1 The Bidder is required to submit one response of the complete bid, including all Attachments, on a USB flash drive. Bidder's documents must be in Microsoft Office 2010 or higher format and/or PDF format, as appropriate. If PDF format is submitted, the file must be searchable.
  - 8.2 The Bidder should note that original signatures in blue ink are required on Attachment B. Attachment B should be printed and included in the package/envelope with the Bidder's USB response. Bidders that do not have a printed copy of Attachment B included within their bid envelope may be subject to disqualification.

- 8.3 To prevent opening by unauthorized individuals, the bid must be sealed in a package/envelope. A label containing the information on the IFB cover page must be clearly typed and affixed to the package in a clearly visible location.
- 8.4 All items in this IFB must be met by the Bidder with the exception of the contract in Attachment F. If the Bidder does not agree with any item in Attachment F, then the Bidder must list the item on the Exception Summary Form in Attachment E.
- 8.5 Where an outline point asks a question or requests information, the Bidder must respond with the specific answer or information requested.
- 8.6 When an outline point/attachment is a statement provided for the Bidder's information only, the Bidder need only read that point. The Bidder acknowledges having read and accepting all sections and Attachments by signing Attachment B.
- 8.7 The Bidder must respond to each requirement by fully describing the manner and degree by which the bid meets or exceeds said requirements. If a Bidder is unable to meet or exceed any requirement, then the Bidder will be disqualified.
- 8.8 If the Bidder includes confidential, proprietary, or trade secret information, they must also submit a complete redacted version of the bid. This redacted version may be submitted as a separate USB flash drive and must be included as a searchable PDF. Vendors shall only redact (black out) language that is exempt from disclosure pursuant to the Mississippi Public Records Act of 1983. (See Legal and Contractual Information, Item 21 for additional information regarding *Disclosure of Bid Information*)
- 9. ITS reserves the right to request additional information or clarification of a Bidder's bid. The Bidder's cooperation during the evaluation process in providing ITS staff with adequate responses to requests for clarification will be considered a factor in the evaluation of the Bidder's overall responsiveness. Lack of such cooperation or failure to provide the information in the manner required may, at the State's discretion, result in the disqualification of the Bidder's bid.
- 10. Unsolicited clarifications and updates submitted after the deadline for bids will be accepted or rejected at the sole discretion of ITS.
- 11. Unsolicited clarifications in the evaluation and selection of best bid will be considered only if all the following conditions are met:
  - 11.1 A clarification to a bid that includes a newly announced product line or service with equal or additional capability to be provided at or less than the proposed price will be considered.
  - 11.2 Information provided must be in effect nationally and have been formally and publicly announced through a news medium that the Bidder normally uses to convey customer information.
  - 11.3 Clarifications must be received early enough in the evaluation process to allow adequate time for re-evaluation.

- 11.4 The Bidder must follow procedures outlined herein for submitting updates and clarifications.
  - 11.5 The Bidder must submit a statement outlining the circumstances for the clarification.
  - 11.6 The Bidder must submit unsolicited clarifications via USB in the same manner as detailed in Item 8 above.
  - 11.7 The Bidder must be specific about which part of the original bid is being changed by the clarification (i.e., must include exact IFB reference to section and outline point).
12. From the issue date of this IFB until a Bidder is selected and the selection is announced, responding Bidders or their representatives may not communicate, either orally or in writing regarding this IFB with any statewide elected official, state officer or employee, member of the legislature or legislative employee except as noted herein. To ensure equal treatment for each responding Bidder, all questions regarding this IFB must be submitted in writing to the State's contact person for the selection process, and not later than the last date for accepting responding Bidder questions provided in this IFB. All such questions will be answered officially by the State in writing. All such questions and answers will become addenda to this IFB, and they will be posted to the ITS web site. Bidders failing to comply with this requirement will be subject to disqualification.
- 12.1 The State's contact person for the selection process is: Evan Thiemann, Technology Consultant, 3771 Eastwood Drive, Jackson, MS 39211, 601-432-8065, [evan.thiemann@its.ms.gov](mailto:evan.thiemann@its.ms.gov).
  - 12.2 Bidder may consult with State representatives as designated by the State's contact person identified in 12.1 above in response to State-initiated inquiries. Bidder may consult with State representatives during scheduled oral presentations and demonstrations excluding site visits.
13. Any interpretation of an ITS IFB will be made by written amendment only. The State will not be responsible for any other explanation of this IFB. A copy of any amendment will be posted on the ITS website, together with the associated IFB specification. Bidders are required to check the ITS website periodically for IFB amendments before the bid opening date at:
- [http://www.its.ms.gov/Procurement/Pages/RFPS\\_Awaiting.aspx](http://www.its.ms.gov/Procurement/Pages/RFPS_Awaiting.aspx)
- Any and all amendments will be posted no later than noon, seven days prior to the bid opening date listed on the cover page of this IFB. If you are unable to access the ITS website, you may contact the ITS Technology Consultant listed on page one of this IFB and request a copy.
14. No negotiations, decisions, or actions shall be executed by any Bidder as a result of any discussions with any State employee. Only transactions which are in writing from ITS may be considered official.

15. Bidders must ensure proper compliance with, and fulfillment of all schedules and deliverables specified within the body of this IFB. The State will not be responsible for the failure of any delivery medium for submission of information to or from the Bidder, including but not limited to, public and private carriers, U.S. mail, Internet Service Providers, facsimile, or e-mail.
16. Expenses for the development and delivery of bids are entirely the responsibility of the bidder and shall not be chargeable to the State.
17. All bid material submitted in writing shall become the property of the State.
18. ITS reserves the right to make multiple awards.
19. ITS reserves the right to approve an award by individual items or in total, whichever is deemed to be in the best interest of the State of Mississippi.
20. The State reserves the right to evaluate the awarded bid from this IFB, including all products and services proposed therein, along with the resulting contractual terms, for possible use in future projects if (a) it is deemed to be in the best interest of the State to do so; and (b) the Bidder is willing to extend a cost less than or equal to that specified in the awarded bid and resulting contract. A decision concerning the utilization of a Bidder's bid for future projects is solely at the discretion of the State and requires the agreement of the proposing Bidder. The State's decision to reuse an awarded bid will be based upon such criteria as: (1) the customer's business requirements; (2) elapsed time since the award of the original project; and/or (3) research on changes in the Bidder, market, and technical environments since the initial award.
21. The State reserves the right to offer the awarded bid from this IFB, including all products and services proposed therein, along with the resulting contractual terms, for possible use in future projects by governmental entities outside Mississippi (i.e., "piggyback option"), if (a) it is deemed to be in the best interest of the governmental entity desiring to do so; and (b) the Bidder is willing to extend a cost less than or equal to that specified in the awarded bid and resulting contract. A decision concerning the utilization of a Bidder's bid for future projects outside Mississippi is solely at the discretion of the State, and requires the desire of the governmental entity outside Mississippi and the agreement of the proposing Bidder. The State's decision to consent to the reuse of an awarded bid outside Mississippi will be based upon such criteria as: (1) the governmental entity's business requirements; (2) elapsed time since the award of the original project; and/or (3) research on changes in the Bidder, market, and technical environments since the initial award.
22. A price increase will not be accepted during the award period or the renewal period, unless stipulated in the contract. However, the State will always take advantage of price decreases.
23. All submitted bids must show the net bid price after any and all allowable discounts have been deducted.
24. State sales tax and federal excise taxes shall not be included as the MDHS is tax exempt for materials sold directly to them.

25. When errors are found in the extension of bid prices, the unit price will govern. Bids having erasures or corrections must be initialed in ink by the bidder.
26. The State reserves the right to solicit Best and Final Offers (BAFOs) from Bidders, principally in situations in which bid costs eclipse available funding or the State believes none of the competing bids presents a Best Value. Because of the time and expense incurred by both the Bidder community and the State, BAFOs are not routinely conducted. Bidders should offer their best pricing with the initial solicitation. Situations warranting solicitation of a BAFO will be considered an exceptional practice for any procurement. Bidders that remain in a competitive range within an evaluation may be requested to tender Best and Final Offers, at the sole discretion of the State. All such Bidders will be provided an equal opportunity to respond with a Best and Final Offer under a procedure to be defined by the State that encompasses the specific, refined needs of a project, as part of the BAFO solicitation. The State may re-evaluate and amend the original project specifications should it be deemed necessary in order to improve the opportunity for attaining Best Value scenarios from among the remaining competing Bidders. All BAFO proceedings will be uniformly conducted, in writing and subject to solicitation by the State and receipt from the Bidders under a precise schedule.
27. The successful Bidder should not commence any billable work until a valid contract has been executed. Any work done by the successful Bidder prior to the execution of the contract is done at the Bidder's sole risk. The State is under no obligation to pay for work done prior to the execution of a contract.
28. Bidders may request additional information or clarifications to this IFB using the following procedure:
  - 28.1 Bidders must clearly identify the specified paragraph(s) in the IFB that is in question.
  - 28.2 Bidder must deliver a written document to Evan Thiemann at ITS by November 12, 2021 at 3:00 p.m. Central Time. This document may be delivered by hand, mail, e-mail, or fax. Address information is given on page one of this IFB. The fax number is (601) 713-6380. **ITS WILL NOT BE RESPONSIBLE FOR DELAYS IN THE DELIVERY OF QUESTION DOCUMENTS.** It is solely the responsibility of the Bidder that the clarification document reaches ITS on time. Bidders may contact Evan Thiemann to verify the receipt of their document. Documents received after the deadline will be rejected.
  - 28.3 All questions will be compiled and answered, and a written document containing all questions submitted and corresponding answers will be posted on the ITS web site by close of business on November 19, 2021.

**INVITATION FOR BID NO. 4419  
LEGAL AND CONTRACTUAL INFORMATION  
PROJECT NUMBER 46465**

**1. Failure to Respond as Prescribed**

Failure to respond as described to any item in the sections and attachments of this IFB, including the *Standard Contract* attached as Attachment F, if applicable, shall contractually obligate the Bidder to comply with that item.

**2. Legal Provisions**

- 2.1 The State of Mississippi is self-insured; all requirements for the purchase of casualty or liability insurance are deleted.
- 2.2 Any provisions disclaiming implied warranties shall be null and void. See Mississippi Code Annotated Sections 11-7-18 and 75-2-719(4). The Bidder shall not disclaim the implied warranties of merchantability and fitness for a particular purpose.
- 2.3 The Bidder shall have no limitation on liability for claims related to the following items:
  - 2.3.1 Infringement issues;
  - 2.3.2 Bodily injury;
  - 2.3.3 Death;
  - 2.3.4 Physical damage to tangible personal and/or real property; and/or
  - 2.3.5 The intentional and willful misconduct or negligent acts of the Bidder and/or Bidder's employees or subcontractors.
- 2.4 All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.
- 2.5 Any contract negotiated under this IFB will be governed by and construed according to the laws of the State of Mississippi. Venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.
- 2.6 Any contract negotiated under this IFB is cancelable in the event the funding authority does not appropriate funds. Notice requirements to Bidder cannot exceed sixty (60) days.
- 2.7 The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into this contract with the Bidder, Bidder agents, subcontractors, or assignees.

- 2.8 The State will deliver payments to the Bidder within forty-five (45) days after receipt of invoice and receipt, inspection, and approval of Bidder's products/services. No late charges will exceed 1.5% per month on any unpaid balance from the expiration of said period until payment is delivered. See Section 31-7-305 of the Mississippi Code Annotated. Seller understands and agrees that Purchaser is exempt from the payment of taxes.
- 2.9 The State shall not pay any attorney's fees, prejudgment interest or the cost of legal action to or for the Bidder.

**3. Approved Contract**

- 3.1 Award of Contract - A contract is considered to be awarded to a proposer once the proposer's offering has been approved through:
  - 3.1.1 Written notification made to proposers on ITS letterhead, or
  - 3.1.2 Notification posted to the ITS website for the project, or
  - 3.1.3 CP-1 authorization executed for the project, or
  - 3.1.4 The ITS Board's approval of same during an open session of the Board.
- 3.2 ITS statute specifies whether ITS Director approval or ITS Board approval is applicable for a given project, depending on the total lifecycle cost of the contract.
- 3.3 A contract is not deemed final until five (5) working days after either the award of contract or post procurement review, as stipulated in the ITS Protest Procedure and Policy. In the event of a valid protest, the State may, at its sole discretion, continue the procurement or stay the procurement in accordance with the ITS Protest Procedure and Policy. If the procurement is stayed, the contract is not deemed final until the protest is resolved.

**4. Contract Validity**

All contracts are valid only if signed by the Executive Director of ITS.

**5. Order of Contract Execution**

Bidders will be required to sign contracts and to initial all contract changes before the Executive Director of ITS signs.

**6. Availability of Funds**

All contracts are subject to availability of funds of the acquiring State entity and are contingent upon receipt by the winning Bidder of a purchase order from the acquiring State entity.

**7. CP-1 Requirement**

All purchase orders issued for goods and services acquired from the awarded Bidder under this IFB must be encoded by the Customer agency with a CP-1 approval number



assigned by ITS. This requirement does not apply to acquisitions that by policy have been delegated to State entities.

**8. Requirement for Electronic Payment and Invoicing**

- 8.1 Payments to the awarded Bidder for all goods and services acquired under this IFB by state agencies that make payments through the Mississippi State Government's Enterprise Resource Planning (ERP) solution ("MAGIC") will be made electronically, via deposit to the bank account of the Bidder's choice. The awarded Bidder must enroll and be activated in PayMode™, the State's current vehicle for sending and receiving electronic payments, prior to receiving any payments from state agencies. There is no charge for a Bidder to enroll or receive payments via PayMode. For additional information on PayMode, including registration instructions, Bidders should visit the following website: <http://portal.paymode.com/ms/>. Bidders may also request assistance from the Mississippi Management and Reporting System (MMRS) Call Center regarding PayMode registration by contacting [mash@dfa.ms.gov](mailto:mash@dfa.ms.gov).
- 8.2 For state agencies that make payments through MAGIC, the awarded Bidder is required to submit electronically all invoices for goods and services acquired under this IFB, along with appropriate supporting documentation, as directed by the State.
- 8.3 Items 8.1 and 8.2 only apply to state agencies that make payments through MAGIC. Payments and invoices for all other entities will conform to their standard methods of payment to contractors.

**9. Prime Contractor**

The selected Bidder will be designated the prime contractor in the bid, and as such, shall be solely responsible for all products/services offered in the bid and for the fulfillment of the contract with the State.

**10. Sole Point of Contact**

ITS will consider the selected Bidder to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

- 10.1 The Bidder must acknowledge and agree that in matters of bids, clarifications, negotiations, contracts and resolution of issues and/or disputes, the Bidder represents all contractors, third parties and/or subcontractors the Bidder has assembled for this project. The Bidder's commitments are binding on all such parties and consequently the State is only required to negotiate with the Bidder.
- 10.2 Furthermore, the Bidder acknowledges and agrees to pass all rights and/or services related to all general consulting, services leasing, software licensing, warranties, hardware maintenance and/or software support to the State from any contractor, third party or subcontractor without the State having to negotiate separately or individually with any such parties for these terms or conditions.
- 10.3 Should a proposing Bidder wish to assign payment of any or all charges resulting from this contract to a third party, Bidder must disclose that fact in his/her bid, along

with the third party's name, address, nature of business, and relationship to the proposing Bidder, the reason for and purpose of the assignment, and all conditions of the assignment, including but not limited to a copy of an assignment document to be executed by the State, the Bidder, and the third party. Such assignments will be accepted or rejected at the sole discretion of the State. Bidder must clearly and definitively state in his/her bid whether the bid is contingent upon the requested assignment of payments. Whenever any assignment of payment is requested, the bid, contract, and assignment document must include language specifically guaranteeing that the proposing Bidder is solely and fully liable and responsible for the performance of its obligations under the subject contract. No assignment of payment will be considered at the time of purchase unless such assignment was fully disclosed in the Bidder's bid and subsequently accepted by the State.

**11. Outstanding Bidder Obligations**

- 11.1 Any Bidder who presently owes the State of Mississippi money pursuant to any contract for which ITS is the contracting agent and who has received written notification from ITS regarding the monies owed, must submit, with the bid, a certified check in the amount due and owing in order for the bid in response to this IFB to be considered. For a Bidder currently in bankruptcy as of the IFB submission date, this requirement is met, if and only if, ITS has an active petition before the appropriate bankruptcy court for recovery of the full dollar amount presently owed to the State of Mississippi by that Bidder. If the Bidder has emerged from bankruptcy by the IFB submission date, the Bidder must pay in full any amount due and owing to the State, as directed in the court-approved reorganization plan, prior to any bid being considered.
- 11.2 Any Bidder who is presently in default on existing contracts for which ITS is the contracting agent, or who otherwise is delinquent in the performance of any such contracted obligations, is in the sole judgment of the State required to make arrangement for fulfilling outstanding obligations to the satisfaction of the State in order for the bid to be considered.
- 11.3 The State, at its sole discretion, may reject the IFB response from a Bidder with any significant outstanding financial or other obligations to the State or who is in bankruptcy at the time of bid submission.

**12. Equipment Condition**

For all IFBs requiring equipment, the Bidder must furnish only new equipment in response to ITS specifications, unless an explicit requirement for used equipment is otherwise specified.

**13. Shipping Charges**

For all IFBs requiring shipment of any product or component, all products must be delivered FOB destination to any location within the geographic boundaries of the State with all transportation charges prepaid and included in the IFB bid. Destination is the point of use. No itemized shipping charges will be accepted.

**14. Ownership of Developed Software**

- 14.1 When specifications require the Bidder to develop software for the State, the Bidder must acknowledge and agree that the State is the sole owner of such developed software with exclusive rights to use, alter, or distribute the software without restriction. This requirement applies to source code, object code, and documentation.
- 14.2 The State may be willing to grant the Bidder a nonexclusive license to use the State's software subject to devising acceptable terms and license fees. This requirement is a matter of State Law, and not negotiable.

**15. Ownership of Custom Tailored Software**

In installations where the Bidder's intellectual property is modified and custom-tailored to meet the needs of the State, the Bidder must offer the State an application license entitling the State to use, and/or alter the software without restriction. These requirements apply to source code, object code and documentation.

**16. Terms of Software License**

The Bidder acknowledges and agrees that the term of all software licenses provided to the State shall be perpetual unless stated otherwise in the Bidder's bid.

**17. The State is Licensee of Record**

The Bidder must not bypass the software contracting phase of a project by licensing project software intended for State use in its company name. Upon award of a project, the Bidder must ensure that the State is properly licensed for all software that is proposed for use in a project.

**18. Compliance with Enterprise Security Policy**

Any solution or service proposed in response to this IFB must be in compliance with the State of Mississippi's Enterprise Security Policy. The Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines and is established to safeguard the State's information technology (IT) assets from unauthorized use, access, disclosure, modification, or destruction. Given that information security is an evolving technology practice, the State reserves the right to introduce new policy during the term of the contract resulting from this IFB and require the Bidder to ensure the solution or service complies with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi. Bidders wanting to view the Enterprise Security Policy should contact the Technology Consultant listed on the cover page of this IFB.

**19. Compliance with Cloud and Offsite Hosting Enterprise Security Policy**

Any cloud or vendor-hosted solution proposed in response to this IFB must be in compliance with the State of Mississippi's Enterprise Cloud and Offsite Hosting Security Policy. The Enterprise Cloud and Offsite Hosting Security Policy is based on industry-standard best practices, policy, and guidelines and augments the Enterprise Security Policy. Given that information security is an evolving technology practice, the State reserves the right to introduce new policy during the term of the contract resulting from

this IFB and require the Bidder to ensure the cloud or vendor-hosted solution complies with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi. Bidders wanting to view the Enterprise Cloud and Offsite Hosting Security Policy should contact the Technology Consultant listed on the cover page of this IFB.

**20. Negotiating with Next-Ranked Bidder**

Should the State cease doing business with any Bidder selected via this IFB process, for any reason, the State reserves the right to initiate negotiations with the next ranked Bidder.

**21. Disclosure of Bid Information**

Bidders should be aware that any information in a bid may be subject to disclosure or reproduction under the Mississippi Public Records Act of 1983, defined in Section 25-61-1 et seq. of the Mississippi Code Annotated. All disclosures of bid information will be made in compliance with the ITS Public Records Procedures established in accordance with the Mississippi Public Records Act. The ITS Public Records Procedures are available in Section 019-010 of the ITS Procurement Handbook, on the ITS Internet site at:

<http://www.its.ms.gov/Procurement/Documents/ISS%20Procurement%20Manual.pdf#page=155> or from ITS upon request.

As outlined in the Third Party Information section of the ITS Public Records Procedures, ITS will give written notice to any affected Bidder of a request to view or reproduce the Bidder's bid or portion thereof. The redacted version, as submitted, will be available for inspection and released in response to public records requests. If a redacted version of the Vendor's bid is not submitted, the original bid will be provided in response to a public records request. ITS will not, however, give such notice with respect to summary information prepared in connection with the State's review or evaluation of a Bidder's bid, including, but not limited to, written presentations to the ITS Board or other approving bodies, and/or similar written documentation prepared for the project file. In addition, ITS will not provide third-party notice for requests for any contract executed as a result of this IFB.

Summary information and contract terms, as defined above, become the property of ITS, who has the right to reproduce or distribute this information without notification.

Bidders should further be aware that requests for disclosure of bid information are sometimes received by ITS significantly after the bid opening date. ITS will notify the signatory "Officer in Bind of Company" provided in Attachment A of this IFB for Notification of Public Records Requests in the event information is requested that your company might wish to consider protecting as a trade secret or as confidential commercial or financial information. If the "Officer in Bind of Company" should not be used for notification of public records requests, Bidder should provide the alternative contact information in response to this IFB item.

**22. Responsibility for Behavior of Bidder Employees/Subcontractors**

The Bidder will be responsible for the behavior of all its employees and subcontractors while on the premises of any State agency or institution. Any Bidder employee or subcontractor acting in a manner determined by the administration of any State agency

or institution to be detrimental, abusive, or offensive to any of the staff or student body of any State agency or institution will be asked to leave the premises and can be suspended from further work on the premises.

**23. Protests**

The Executive Director of ITS and/or the Board Members of ITS or their designees shall have the authority to resolve Bidder protests in connection with the selection for award. Copies of the protest procedures are available on the ITS website - ITS Protest Procedure and Policy, Section 019-020, ITS Procurement Handbook at:

<http://www.its.ms.gov/Procurement/Documents/ISS%20Procurement%20Manual.pdf#page=173> or from ITS upon request.

**24. Protest Bond**

Potential Bidders may protest any of the specifications of this IFB on the belief that the specification is unlawful, unduly restrictive, or unjustifiably restraining to competition. Any such protest must be in writing and submitted to the ITS Executive Director along with the appropriate protest bond within five (5) working days of the Official Release of the IFB, as defined in the ITS Protest Procedure and Policy. The outside of the envelope must be marked "Protest" and must specify IFB Number 4419.

As a condition precedent to filing any protest related to this procurement, the Bidder must procure, submit to the ITS Executive Director with its written protest, and maintain in effect at all times during the course of the protest or appeal thereof, a protest bond in the full amount of the total estimated project lifecycle cost or \$250,000.00, whichever is less. The total estimated project lifecycle cost will be the amount used by ITS in the computation of cost points, as the low cost in the denominator of the cost evaluation formula. The bond shall be accompanied by a duly authenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the protest bond and shall identify a contact person to be notified in the event that the State is required to take action against the bond. The protest bond shall not be released to the protesting Bidder until the protest is finally resolved and the time for appealing said protest has expired. The protest bond shall be procured at the protesting Bidder's expense and be payable to the Mississippi Department of Information Technology Services. Prior to approval of the protest bond, ITS reserves the right to review the protest bond and require the protesting Bidder to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by the protesting Bidder. The State may claim against the protest bond as specified in Section 25-53-5 (n) of the Mississippi Code of 1972, as amended during the 1998 Mississippi legislative session, in addition to all other rights and remedies the State may have at law or in equity.

Should the written protest submitted by the Bidder fail to comply with the content requirements of ITS' protest procedure and policy, fail to be submitted within the prescribed time limits, or fail to have the appropriate protest bond accompany it, the protest will be summarily dismissed by the ITS Executive Director.

**25. Mississippi Employment Protection Act**

Effective July 1, 2008, Bidder acknowledges that if awarded, it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi

Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Bidder will agree to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State.

Bidder acknowledges and certifies that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi.

Bidder acknowledges that violating the E-Verify Program (or successor thereto) requirements subjects Bidder to the following: (a) cancellation of any state or public contract and ineligibility for any state or public contract for up to three (3) years, with notice of such cancellation being made public, or (b) the loss of any license, permit, certification or other document granted to Bidder by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. Bidder would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

**ATTACHMENT A  
BID FORM**

**I. Procurement Schedule**

<b>Task</b>	<b>Date</b>
First Advertisement Date for IFB	11/02/2021
Second Advertisement Date for IFB	11/09/2021
Deadline for Bidder's Written Questions	3:00 p.m. Central Time on 11/12/2021
Deadline for Questions Answered and Posted to ITS Web Site	11/19/2021
Open Bids	3:00 p.m. Central Time on 11/29/2021
Evaluation of Bids	11/29/2021
Contract Negotiation	12/03/2021
Project Go-Live Deadline	01/01/2022

**II. Background and Overview**

The Mississippi Department of Human Services (MDHS) is seeking Galaxy Access Control Annual Hosting and Maintenance for their existing building access equipment at various agency sites for a period of three (3) years. Version 11.6.0.1 is currently in use by MDHS.

The Incumbent vendor is Access Control Group, Inc., and the current contract expires December 31, 2021. The annual term is January 1 through December 31.

**III. Specifications**

Bidders must fully respond to each requirement by fully describing the manner and degree by which the bid meets or exceeds the following specifications. If a Bidder is unable to meet or exceed these specifications, then the Bidder will be disqualified.

1. Vendor will install and host the latest version of Galaxy Access Control Software and provide software updates when available to maintain the following sites:
  - a. 14608 MS-39, DeKalb, MS.
  - b. City Centre 200 South Lamar, Jackson, MS.
  - c. 4777 Medgar Evers Blvd, Jackson, MS.
  - d. 750 N. State Street, Jackson, MS.
  - e. 603 Marquette Rd, Brandon, MS.
  - f. 10260 Larkin Road, Gulfport, MS.
2. MDHS has 105 doors that are currently in service however MDHS may need up to 125 doors serviced. Vendor will charge only for the number of doors being serviced.
3. Vendor will provide repair and maintenance service for 3 badge printers at the following sites:
  - a. 750 N. State Street, Jackson, MS. (MagiCARD Rio Pro 360)
  - b. 200 South Lamar St., Jackson, MS (AlphaCard Pro 750)
  - c. 10260 Larkin Road, Gulfport, MS. (MagiCARD Rio Pro)

4. Vendor maintenance will include all labor and travel costs for repair on repairable equipment and upgrading hardware and software when needed. At minimum, service must be available 8:00 A.M. to 5:00 P.M. (Central Time).
5. Vendor will provide labor for upgrading hardware and software when needed.
6. Vendor will provide phone and remote support available at minimum 8:00 a.m. to 5:00 p.m. (Central Time).
7. Vendor will provide web and phone access to the system.
8. Vendor will provide annual preventative maintenance.

#### **IV. Cloud or Offsite Hosting Requirements**

##### **1. Data Ownership**

The State shall own all right, title and interest in all data used by, resulting from, and collected using the services provided. The Bidder shall not access State User accounts, or State Data, except (i) in the course of data center operation related to this solution; (ii) response to service or technical issues; (iii) as required by the express terms of this service; or (iv) at State 's written request.

##### **2. Data Protection**

Protection of personal privacy and sensitive data shall be an integral part of the business activities of the Bidder to ensure that there is no inappropriate or unauthorized use of State information at any time. To this end, the Bidder shall safeguard the confidentiality, integrity, and availability of State information and comply with the following conditions:

- All information obtained by the Bidder under this contract shall become and remain property of the State.
- At no time shall any data or processes which either belong to or are intended for the use of State or its officers, agents, or employees be copied, disclosed, or retained by the Bidder or any party related to the Bidder for subsequent use in any transaction that does not include the State.

##### **3. Data Location**

The Bidder shall not store or transfer State data outside of the United States. This includes backup data and Disaster Recovery locations. The Bidder will permit its personnel and contractors to access State data remotely only as required to provide technical support.

##### **4. Encryption**

The Bidder shall encrypt all non-public data in transit regardless of the transit mechanism. For engagements where the Bidder stores non-public data, the data shall be encrypted at rest. The key location and other key management details will be discussed and negotiated by both parties. Where encryption of data at rest is not possible, the Bidder must describe existing security measures that provide a similar level of protection. Additionally, when the Bidder cannot offer encryption at rest, it must maintain, for the duration of the contract, cyber security liability insurance



coverage for any loss resulting from a data breach. The policy shall comply with the following requirements:

- The policy shall be issued by an insurance company acceptable to the State and valid for the entire term of the contract, inclusive of any term extension(s).
- The Bidder and the State shall reach agreement on the level of liability insurance coverage required.
- The policy shall include, but not be limited to, coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, and liability assumed under an insured contract.
- At a minimum, the policy shall include third party coverage for credit monitoring, notification costs to data breach victims; and regulatory penalties and fines.
- The policy shall apply separately to each insured against whom claim is made or suit is brought subject to the Bidder's limit of liability.
- The policy shall include a provision requiring that the policy cannot be cancelled without thirty (30) days written notice.
- The Bidder shall be responsible for any deductible or self-insured retention contained in the insurance policy.
- The coverage under the policy shall be primary and not in excess to any other insurance carried by the Bidder.
- In the event the Bidder fails to keep in effect at all times the insurance coverage required by this provision, the State may, in addition to any other remedies it may have, terminate the contract upon the occurrence of such event, subject to the provisions of the contract.

5. Breach Notification and Recovery

Unauthorized access or disclosure of non-public data is considered to be a security breach. The Bidder will provide immediate notification and all communication shall be coordinated with the State. When the Bidder or their sub-contractors are liable for the loss, the Bidder shall bear all costs associated with the investigation, response and recovery from the breach including but not limited to credit monitoring services with a term of at least 3 years, mailing costs, website, and toll free telephone call center services. The State shall not agree to any limitation on liability that relieves a Bidder from its own negligence or to the extent that it creates an obligation on the part of the State to hold a Bidder harmless.

6. Notification of Legal Requests

The Bidder shall contact the State upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to the data of the State. The Bidder shall not respond to subpoenas, service of process, and other legal requests related to the State without first notifying the State unless prohibited by law from providing such notice.

7. Termination and Suspension of Services

In the event of termination of the contract, the Bidder shall implement an orderly return

of State data in CSV or XML or another mutually agreeable format. The Bidder shall guarantee the subsequent secure disposal of State data.

- **Suspension of services:** During any period of suspension of this Agreement, for whatever reason, the Bidder shall not take any action to intentionally erase any State data.
- **Termination of any services or agreement in entirety:** In the event of termination of any services or of the agreement in its entirety, the Bidder shall not take any action to intentionally erase any State data for a period of 90 days after the effective date of the termination. After such 90 day period, the Bidder shall have no obligation to maintain or provide any State data and shall thereafter, unless legally prohibited, dispose of all State data in its systems or otherwise in its possession or under its control as specified in section 7(d) below. Within this 90 day timeframe, Bidder will continue to secure and back up State data covered under the contract.
- **Post-Termination Assistance:** The State shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement.
- **Secure Data Disposal:** When requested by the State, the provider shall destroy all requested data in all of its forms, for example: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods. Certificates of destruction shall be provided to the State.

**8. Background Checks**

The Bidder warrants that it will not utilize any staff members, including sub-contractors, to fulfill the obligations of the contract who have been convicted of any crime of dishonesty. The Bidder shall promote and maintain an awareness of the importance of securing the State's information among the Bidder's employees and agents.

**9. Security Logs and Reports**

The Bidder shall allow the State access to system security logs that affect this engagement, its data, and/or processes. This includes the ability to request a report of the activities that a specific user or administrator accessed over a specified period of time as well as the ability for an agency customer to request reports of activities of a specific user associated with that agency. These mechanisms should be defined up front and be available for the entire length of the agreement with the Bidder.

**10. Contract Audit**

The Bidder shall allow the State to audit conformance including contract terms, system security and data centers as appropriate. The State may perform this audit or contract with a third party at its discretion at the State's expense.

**11. Sub-contractor Disclosure**

The Bidder shall identify all of its strategic business partners related to services

provided under this contract, including but not limited to, all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Bidder, who will be involved in any application development and/or operations.

**12. Sub-contractor Compliance**

The Bidder must ensure that any agent, including a Bidder or subcontractor, to whom the Bidder provides access agrees to the same restrictions and conditions that apply through this Agreement.

**13. Processes and Procedures**

The Bidder shall disclose its non-proprietary security processes and technical limitations to the State so that the State can determine if and how adequate protection and flexibility can be attained between the State and the Bidder. For example: virus checking and port sniffing — the State and the Bidder shall understand each other's roles and responsibilities.

**14. Operational Metrics**

The Bidder and the State shall reach agreement on operational metrics and document said metrics in the Service Level Agreement. At a minimum the SLA shall include:

- Advance notice and change control for major upgrades and system changes
- System availability/uptime guarantee/agreed-upon maintenance downtime
- Recovery Time Objective/Recovery Point Objective
- Security Vulnerability Scanning

## ATTACHMENT B COST SUBMISSION

It is the responsibility of the Bidder to clearly identify all costs associated with any item or series of items in this IFB. The Bidder must include and complete all parts of the cost proposal in a clear and accurate manner. Omissions, errors, misrepresentations, or inadequate details in the Bidder's cost proposal may be grounds for rejection of the bid. Costs that are not clearly identified will be borne by the Bidder. The Bidders must complete the table below, which outlines the minimum requirements for providing cost information. The Bidder should supply supporting details as described.

**THIS FORM IS TO BE PRINTED AND INCLUDED WITHIN THE BID ENVELOPE. BIDDERS THAT DO NOT COMPLY COULD FACE AUTOMATIC ELIMINATION.**

Description	QTY	Year 1		Year 2		Year 3	
		Unit Cost	Cost Per Month	Unit Cost	Cost Per Month	Unit Cost	Cost Per Month
Annual Hosting per Door	125						
Annual Maintenance per Door (includes labor and travel)	125						
Annual Hosting per Badge Printer	3						
Annual Maintenance per Badge Printer (includes labor and travel)	3						
<b>ANNUAL TOTAL:</b>							
<b>TOTAL 3-YEAR COST:</b>							

By signing below, the Bidder is contractually obligated to comply with all items in this IFB, including the Standard Contract in Attachment F, if included herein, except those specifically listed as exceptions on the Exception Summary Form. If no Exception Summary Form is included, the Bidder is indicating that he takes no exceptions. Bidders who respond to this IFB by signing below may not later take exception to any item in the IFB during contract negotiations. This acknowledgement also contractually obligates any and all

subcontractors that may be proposed. No exceptions by subcontractors or separate terms and conditions will be entertained after the fact.

\_\_\_\_\_  
Original Signature of Officer in Bind of Company

Name (Print) \_\_\_\_\_

Title \_\_\_\_\_

Company Name \_\_\_\_\_

Date \_\_\_\_\_

## ATTACHMENT C IFB QUESTIONNAIRE

Please answer each question or provide the information as requested in this section.

1. **Mississippi's Accountability System for Government Information and Collaboration (MAGIC) Information for State of Mississippi Vendor File**

- 1.1 **MAGIC Vendor Code:** Any Bidder who has not previously done business with the State and has not been assigned a MAGIC Vendor code should visit the following link to register:

[https://sus.magic.ms.gov/sap/bc/webdynpro/sapsrm/wda\\_e\\_suco\\_sreg?sap-client=100](https://sus.magic.ms.gov/sap/bc/webdynpro/sapsrm/wda_e_suco_sreg?sap-client=100)

Bidders who have previously done business with the State may obtain their MAGIC Vendor code and all Vendors may access additional Vendor information at the link below.

<http://www.dfa.ms.gov/dfa-offices/mmrs/mississippi-suppliers-vendors/supplier-self-service/>

All Bidders must furnish ITS with their MAGIC Vendor code.

MAGIC Vendor Code: \_\_\_\_\_

- 1.2 **Vendor Self-Certification Form:** The State of Mississippi, in an effort to capture participation by minority Vendors, asks that each Bidder review the State of Mississippi Minority Vendor Self Certification Form. This information is for tracking/reporting purposes only, and will not be used in determining which Bidder will be chosen for the project. Any Bidder who can claim status as a Minority Business Enterprise or a Woman Business Enterprise in accordance with the definitions on this form and who has not previously submitted a form to the State of Mississippi should submit the completed form with the bid. A copy of the Minority Vendor Self-Certification Form can be obtained at:

<https://mississippi.org/services/minority/>

Please direct any questions about minority certification in Mississippi to the Minority Business Enterprise Division of the Mississippi Development Authority by telephone at (601) 359-3448 or via email at [minority@mississippi.org](mailto:minority@mississippi.org).

If Bidder is claiming status as a Minority Business Enterprise or Woman Business Enterprise, the Bidder must include a copy of their Minority Vendor Self-Certification Form with their IFB response.

2. **Certification of Authority to Sell**

The Bidder must certify Bidder is a seller in good standing, authorized to sell and able to deliver all items and related services proposed in the State of Mississippi in the time frame specified. Does the Bidder make these certifications? (A yes or no answer is required.)

**3. Compliance with National Defense Authorization Act**

The Bidder must state if the equipment provided is in compliance with the National Defense Authorization Act, Section 889. (A yes or no answer is required.)

**4. Certification of No Conflict of Interest**

Mississippi law clearly forbids a direct or indirect conflict of interest of a company or its employees in selling to the State. The Bidder must answer and/or provide the following:

4.1 Does there exist any possible conflict of interest in the sale of items to any institution within ITS jurisdiction or to any governing authority? (A yes or no answer is required.)

4.2 If the possibility of a conflict does exist, provide a list of those institutions and the nature of the conflict on a separate page and include it in your bid. The Bidder may be precluded from selling to those institutions where a conflict of interest may exist.

**5. Pending Legal Actions**

5.1 Are there any lawsuits or other legal proceedings against the Bidder that pertain to any of the software, hardware, or other materials and/or services which are a part of the Bidder's bid? (A yes or no answer is required.)

5.2 Are there any criminal or civil proceedings (federal or state) pending against the Bidder or its principals or employees that pertain to any public procurement within the State of Mississippi or elsewhere? (A yes or no answer is required.)

5.3 If your answer to either of the above is "yes", provide a copy of same and state with specificity the current status of the proceedings.

5.4 The State, at its sole discretion, may reject the bid of a Bidder who (a) has criminal or civil proceedings pending that pertain to a public procurement within Mississippi or elsewhere, or (b) has lawsuits or other legal proceedings pending that pertain to any of the products or services which are part of the Bidder's bid.

**6. Non-Disclosure of Social Security Numbers**

Does the Bidder agree that any information system proposed, developed, or modified under this IFB that disseminates, in any form or manner, information or material that contains the Social Security Number of an individual, has mechanisms in place to prevent the inadvertent disclosure of the individual's Social Security Number to members of the general public or to persons other than those persons who, in the performance of their duties and responsibilities, have a lawful and legitimate need to know the individual's Social Security Number? This agreement is required by Section 25-1-111 of the Mississippi Code Annotated.

**6. Taxpayer Identification Number**

Bidder must specify their taxpayer identification number.

7. **Certification of Liability Insurance**

Bidder must provide a copy of their Certificate of Liability Insurance with their IFB response.

8. **Order and Remit Address**

The Bidder must specify both an order and a remit address:

Order Address:

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Remit Address (if different):

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9. **Web Amendments**

ITS will use the ITS website to post amendments regarding IFBs before the bid opening at:

[http://www.its.ms.gov/Procurement/Pages/RFPS\\_Awaiting.aspx](http://www.its.ms.gov/Procurement/Pages/RFPS_Awaiting.aspx)

ITS may post clarifications until noon seven days prior to the bid opening date listed on the cover page of this IFB or the posted extension date, if applicable.

Bidders may list any questions or items needing clarification discovered in the week prior to the bid opening in a written format at the beginning of the bid response or in the comment section for the individual offering.

Does the Bidder certify that they have reviewed a copy of the ITS amendments for IFBs as above stated? (A yes or no answer is required.)

10. **E-Verify Registration Documentation**

Bidder acknowledges and certifies that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Bidder must provide documentation of their E-Verify compliance with their IFB response.



## **ATTACHMENT D REFERENCES**

Please return the following Bidder Reference Forms, and if applicable, Subcontractor Reference Forms.

### **1. References**

- 1.1 The Bidder must provide three (3) verifiable references consisting of Bidder accounts that the State may contact. Required information includes customer contact name, address, telephone number, e-mail address, and engagement starting and ending dates. Forms for providing reference information are included in this IFB Attachment. The Bidder must make arrangements in advance with the account references so that they may be contacted at the Project team's convenience without further clearance or Bidder intercession.
- 1.2 Any of the following may subject the Bidder's bid to being rated unfavorably relative to these criteria or removed from further consideration, at the State's sole discretion:
  - 1.2.1 Failure to provide reference information in the manner described;
  - 1.2.2 Inability of the State to substantiate minimum experience or other requirements from the references provided;
  - 1.2.3 Non-responsiveness of references to the State's attempts to contact them; or
  - 1.2.4 Unfavorable references that raise serious concerns about material risks to the State in contracting with the Bidder for the proposed products or services.
- 1.3 References should be based on the following profiles and be able to substantiate the following information from both management and technical viewpoints:
  - 1.3.1 The reference product/service must be for a project similar in scope and size to the project for which this IFB is issued;
  - 1.3.2 The reference product/service must have been operational for at least six (6) months.
- 1.4 The State reserves the right to request information about the Bidder from any previous customer of the Bidder of whom the State is aware, including the procuring agency and/or other agencies or institutions of the State, even if that customer is not included in the Bidder's list of references, and to utilize such information in the evaluation of the Bidder's proposal.
- 1.5 Unless otherwise indicated, reference information available to the State will be used as follows:

- 1.5.1 As documentation supporting mandatory experience requirements for companies, products, and/or individuals, as required in this IFB;
  - 1.5.2 To confirm the capabilities and quality of a Bidder, product, or individual for the bid, prior to finalizing the award.
- 1.6 The State reserves the right to forego reference checking when, at the State's sole discretion, the evaluation team determines that the capabilities of the recommended Bidder are known to the State.

## **2. Subcontractors**

The Bidder's bid must identify any subcontractor that will be used and include the name of the company, telephone number, contact person, type of work subcontractor will perform, number of certified employees to perform said work, and three (3) references for whom the subcontractor has performed work that the State may contact. Forms for providing subcontractor information and references are included at the end of this Attachment.

Unless otherwise noted, the requirements found in the References Attachment may be met through a combination of Bidder and subcontractor references and experience. Bidder's bid should clearly indicate any mandatory experience requirements met by subcontractors. NOTE: The State reserves the right to eliminate from further consideration bids in which the prime Bidder does not, in the State's sole opinion, provide substantive value or investment in the total solution proposed (i.e. the State does not typically accept bids in which the prime Bidder is only a brokering agent).

### **BIDDER REFERENCE FORM**

**Complete three (3) Reference Forms.**

Contact Name:  
Company Name:  
Address:  
Phone #:  
E-Mail:

Description of product/services/project, including start and end dates:

--

### **SUBCONTRACTOR REFERENCE FORM**

**Complete three (3) separate forms for each subcontractor proposed.**

Contact Name:  
Company name:  
Address:  
Phone #:  
E-Mail:

Scope of services/products to be provided by subcontractor:

--

## ATTACHMENT E CONTRACT EXCEPTIONS

Please return the *Exception Summary Form* at the end of this Attachment with all exceptions to the Standard Contract, attached as Attachment E, listed and clearly explained or state "No Exceptions Taken." If no *Exception Summary Form* is included, the Bidder is indicating that he takes no exceptions to any item in this IFB document.

1. Unless specifically disallowed herein, the Bidder may take exception to any item within the Standard Contract, as long as the following are true:
  - 1.1 The item is not a matter of State law;
  - 1.2 The bid still meets the intent of the IFB;
  - 1.3 An *Exception Summary Form* is included with Bidder's proposal; and
  - 1.4 The exception is clearly explained, along with any alternative or substitution the Bidder proposes to address the intent of the specification, on the *Exception Summary Form*.
2. The Bidder has no liability to provide items to which an exception has been taken. ITS has no obligation to accept any exception. During the bid evaluation and/or contract negotiation process, the Bidder and ITS will discuss each exception and take one of the following actions:
  - 2.1 The Bidder will withdraw the exception and agree to the language in the manner prescribed;
  - 2.2 ITS will determine that the exception neither poses significant risk to the project nor undermines the intent of the IFB and will accept the exception;
  - 2.3 ITS and the Bidder will agree on compromise language dealing with the exception and will insert same into the contract; or
  - 2.4 None of the above actions is possible, and ITS either disqualifies the Bidder's bid or withdraws the award and proceeds to the next ranked Bidder.
3. Should ITS and the Bidder reach a successful agreement, ITS will sign adjacent to each exception which is being accepted or submit a formal written response to the *Exception Summary* responding to each of the Bidder's exceptions. The *Exception Summary*, with those exceptions approved by ITS, will become a part of any contract on acquisitions made under this IFB.
4. An exception will be accepted or rejected at the sole discretion of the State.
5. The State desires to award this IFB to a Bidder or Bidders with whom there is a high probability of establishing a mutually agreeable contract, substantially within the standard terms and conditions of the State's IFB, including the *Standard Contract* in Attachment F, if included herein. As such, Bidders whose bids, in the sole opinion of the State, reflect a

substantial number of exceptions to this IFB, may place themselves at a comparative disadvantage in the evaluation process or risk disqualification of their bids.

6. For Bidders who have successfully negotiated a contract with ITS in the past, ITS requests that, prior to taking any exceptions to this IFB, the individual(s) preparing this bid first confer with other individuals who have previously submitted bids to ITS or participated in contract negotiations with ITS on behalf of their company, to ensure the Bidder is consistent in the items to which it takes exception.

### EXCEPTION SUMMARY FORM

List and clearly explain any exceptions for the Standard Contract in the table below.

ITS Contract Reference (Reference specific outline point to which exception is taken)	Brief Explanation of Exception (Short description of exception being made)	ITS Acceptance (sign here only if accepted)
1.		
2.		
3.		
4.		
5.		
6.		
7.		

## **ATTACHMENT F STANDARD CONTRACT**

A properly executed contract is a requirement of this IFB. After an award has been made, it will be necessary for the winning Bidder to execute a contract with ITS. The inclusion of this contract does not preclude ITS from, at its sole discretion, negotiating additional terms and conditions with the selected Bidder(s) specific to the projects covered by this IFB.

If Bidder cannot comply with any term or condition of this Standard Contract, Bidder must list and explain each specific exception on the Exception Summary Form included in Attachment E. If no Exception Summary Form is included, the Bidder is indicating that he takes no exceptions. Bidders who fail to take exception to any point in the Standard Contract may not later do so during contract negotiations.



**PROJECT NUMBER 46465**  
**SOFTWARE LICENSE AND APPLICATION SERVICE PROVIDER AGREEMENT**  
**BETWEEN**  
**VENDOR NAME**  
**AND**  
**MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES**  
**AS CONTRACTING AGENT FOR THE**  
**MISSISSIPPI DEPARTMENT OF HUMAN SERVICES**

This Software License and Application Service Provider Agreement (hereinafter referred to as "Agreement") is entered into by and between, **VENDOR NAME**, a **STATE OF INCORPORATION** corporation having its principal place of business at **VENDOR ADDRESS** (hereinafter referred to as "Licensor"), and Mississippi Department of Information Technology Services having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as "ITS"), as contracting agent for the Mississippi Department of Human Services, located at 200 South Lamar Street, Jackson, Mississippi 39201 (hereinafter referred to as "Licensee" and/or "MDHS"). ITS and MDHS are sometimes collectively referred to herein as "State."

**WHEREAS**, MDHS, pursuant to Information for Bid (hereinafter referred to as "IFB") Number 4419 requested proposals for the services of a contractor to host and maintain an Application Service Provider ("ASP") solution for a Building Security Access Control Hosting and Maintenance System; and

**WHEREAS**, Licensor was the successful proposer in an open, fair and competitive procurement process to provide the software and services described herein;

**NOW THEREFORE**, in consideration of the mutual understandings, promises and agreements set forth, the parties hereto agree as follows:

**ARTICLE 1 DEFINITIONS**

**1.1** "Active User" means MDHS employees actively participating on the system in any given month of operation, who shall be bound to the terms and conditions of this Agreement. Licensor does not impose a limit on the number of Active Users accessing or registering to use the system.

**1.2** "Available Date" means the date upon which Licensor notifies MDHS that the Software may be accessed on the Licensor's ASP server and MDHS may begin acceptance testing.

**1.3** "Content" means any content provided by or through Active Users for use with the Software.

**1.4** "Documentation" means the published user and technical manuals and documentation that Licensor makes generally available for the Software; the help files included within the Software, and any files containing presentation materials or manuals or other related materials to train and educate Licensee and the Active Users on the use of the Software.

**1.5** "Enhancements" means the corrections, updates, upgrades or new versions of the Software or Documentation that Licensor may provide to Licensee under this Agreement.

**1.6** "Licensee" means the MDHS, its employees, and any third party consultants or outsourcers engaged by MDHS who have a need to know and who shall be bound by the terms and conditions of this Agreement.

**1.7** "Licensor" means **VENDOR NAME**, and its successors and assigns.

**1.8** "Products" means the Software, Documentation, Corrections, Enhancements and any copy of the Software, Documentation, Corrections, or Enhancements provided by the Licensor.

**1.9** "Services" means any on-line user access, customizations, interface development, consulting, education, ASP installation, system administration, training, maintenance, support, and Help Desk services provided by Licensor to Licensee.

**1.10** "Software" means the machine-readable object code version of the computer programs whether embedded on disc, tape or other media used for the management of the web-based Building Security Access Control Hosting and Maintenance System and Supported Interfaces (and any Documentation and help files within the Software), including any Enhancements provided pursuant to the maintenance and support terms identified herein.

**1.11** "Software Error" means a reproducible defect or combination thereof in the Software that results in a failure of the Software when used in accordance with the Documentation. Software Errors do not include those errors caused by (a) Licensee's negligence, (b) any unauthorized modification or alteration Licensee makes to the Software, (c) data that does not conform to Licensor's specified data format, (d) operator error, or (e) use not conforming to the Licensor's supported technical environment specified in the Documentation.

**1.12** "Supported Interfaces" means application-based interfaces (API), network protocols, data formats, database schemas, and file formats used in the Software as described in the Documentation.

## **ARTICLE 2 PERIOD OF PERFORMANCE**

**2.1** Unless this Agreement is extended by mutual agreement or terminated as prescribed elsewhere herein, this Agreement shall begin on the date it is signed by all parties and shall continue in effect until the Licensor completes all tasks required herein pursuant to the project work plan, including services during the three (3) year hosting term. The web-based Building Security Access Control Hosting and Maintenance System, as customized for the State of Mississippi, must be implemented; fully functional; accepted by MDHS, and all tasks (excluding hosting) required herein, including but not limited to development of required interfaces and training, completed on or before December 31, 2024, unless a change in this date is mutually agreed to in writing by the State and the Licensor. At the end of the three (3) year initial ASP services term, the ASP services may, upon the written agreement of the parties, be renewed under the same terms and conditions for three (3) terms. One hundred and eighty (180) days prior to the expiration of the initial hosting term or any renewal hosting term of this Agreement, Licensor shall notify MDHS and ITS of the impending expiration and MDHS shall have sixty (60) days in which to notify Licensor of its intention to either renew or cancel the ASP services.

**2.2** This Agreement will become a binding obligation on the State only upon the issuance of a valid purchase order by MDHS following contract execution and the issuance by ITS of the CP-1 Acquisition Approval Document.

### **ARTICLE 3 SCOPE OF SERVICES**

**3.1** The Licensor agrees to provide to MDHS an ASP based Building Security Access Control System with Hosting and Maintenance Services and associated deliverables required to provide, host and maintain a web based application for MDHS as described in this Agreement. While the scope of work for this project is defined by the contract documents set forth herein in the article titled "Entire Agreement", a summary of such work is outlined in Article 3.5 below.

**3.2** The Licensor acknowledges that MDHS intends to be actively involved in the day-to-day progress of the project. The Licensor agrees to (a) obtain MDHS's approval of all tasks and the time schedule for completion of said tasks prior to commencing performance, if not already contained in the approved project work plan; (b) make available to the State project team members all project work papers and work-in-progress for review; (c) ensure that the Licensor Project Manager works closely together with the State Project Manager, (d) provide MDHS access to the host website; (e) meet with MDHS on a regular basis at a mutually agreeable time, and as otherwise requested by MDHS, to discuss the status of the project, and (f) if required by MDHS, submit written project status reports.

**3.3** The parties understand and agree that the project shall be structured with interim deliverables as set forth in the agreed upon project work plan so as to allow MDHS an opportunity to accept or reject the deliverables, including but not limited to, specifications, requirement definitions, process designs, data analyses, web layouts, screen layouts, and report layouts. The actual customizations shall not begin until after MDHS has communicated its conceptual approval of the results the Licensor plans to provide. MDHS shall have ten (10) business days to review interim materials, which review period can only be reduced by mutual agreement of the Licensor and MDHS.

**3.4** It is understood by the parties that the project work plan must be in place within fifteen (15) business days of execution of this Agreement and prior to any other work being performed. Once this mutually agreed upon project work plan, which will identify specific time frames and deliverable target dates for this project, has been developed, it will be incorporated into and made a part of this Agreement. The dates in the project work plan will define the agreed upon period of performance. The parties acknowledge that the project work plan will evolve and change from time to time upon the mutual written agreement of both parties. The parties agree that the deliverables and schedule set forth in the latest version of the project work plan will take precedence over any prior plans.

**3.5** Licensor shall be responsible for the following:

- A. Ensuring that all deliverables are complete and accepted by MDHS pursuant to the mutually agreed upon project work plan;
- B. Ensuring that the host site complies with PriorityOne of the World Wide Web Consortium's (W3C's) Web Accessibility Initiative and guidelines in Section 508 of the Rehabilitation Act that are not covered in W3C Priority;
- C. Tracking date sensitive items to ensure timely updates;
- D. All Content provided by the Licensee and collected by the Software shall remain the sole and exclusive property of the Licensee. Upon the termination or expiration of this Agreement, Licensor shall provide such Content in its possession to the Licensee pursuant to a mutually agreed upon release schedule;

- E. Working with MDHS to achieve access rates that meet MDHS' needs;
- F. Providing security for the host site that is agreeable to MDHS with Licensor responsible for all necessary equipment and software related to security;
- G. Maintaining the accessibility of the site twenty-four (24) hours a day, seven (7) days a week at an uptime rate of 99% or greater, subject to the limitations set forth in this Agreement, including but not limited to, those in Article 4.4;
- H. Completing daily backups of the site;
- I. Notifying MDHS at least three (3) business days prior to any anticipated service interruption, with said notice containing a general description of the reason for the service interruption;
- J. Proposing and adhering to a disaster recovery plan and providing access to such plan to the State, all at Licensor's expense;
- K. Participating with MDHS in disaster recovery planning and testing based on a mutually agreed upon schedule;
- L. Maintaining the confidentiality of the data entered;
- M. Providing MDHS access to all of the technical information concerning operation of the site, including but not limited to, server specifications, Internet connection information, personnel requirements and software implementations;
- N. Identifying any commercially available software, by vendor and version number, integrated into the Products and describing the particular functionality of any software that is proprietary to the Licensor;
- O. Maintaining the host site, with the cost for such support, maintenance, and hosting for years following the initial 3 year period not increasing annually beyond five percent (5%) or the percent increase in the consumer price index for all Urban Consumers, US City Average (C.P.I.-U) for the preceding year, whichever is less;
- P.
- Q. Providing SSL secure server support;
- R. Providing monthly reports containing line utilization, site availability statistics, network usage, security user access reports and system performance data to MDHS;
- S. Maintaining sufficient bandwidth and server capacity to meet MDHS and Active Users' demand as it may fluctuate and increase during the term of this Agreement, and
- T. Ensuring that upon termination or expiration of this Agreement that transition of the site from the Licensor to MDHS or to a successor host will be accomplished at no expense to MDHS, and with minimal interruption of the site's accessibility and insignificant changes in the site's appearance and functionality.

**3.6** In the event Licensor creates any revisions to or upgrades of the system, Licensor shall provide Licensee thirty (30) days written notification of such revision or upgrade, and shall, upon request of Licensee, furnish such revision or upgrade to Licensee free of charge as part of the ASP fees.

#### **ARTICLE 4 SCOPE OF HARDWARE MAINTENANCE**

Licensor agrees to provide all travel, labor, and material required to maintain the equipment listed in Exhibit A, which is attached hereto and incorporated herein. Further, Licensor warrants that it will provide services to the Licensee as follows:

**4.1** Licensor shall provide all preventive and remedial maintenance necessary to maintain the equipment listed in Exhibit A in good operating condition.

**4.2** Licensor shall respond by telephone within one (1) hour to requests for unscheduled remedial maintenance service, Monday through Friday, 8:00 A.M. to 5:00 P.M. (Central Time), and come on site with the necessary crash kit within four (4) hours from the point the call is made to service components deemed critical by Licensee and within eight (8) hours from the point the call is made to service all other peripherals and related computer equipment.

**4.3** Licensor shall maintain in house the most frequently used supply replacement parts needed to service the equipment. Replacement parts will be new and not used or refurbished and will either be manufactured by and/or meet the minimum specifications established by the manufacturer of the equipment. Title to all replacement parts installed in the equipment will pass to the Licensee at the time of replacement, and title to parts removed for replacement will, at the time of replacement, pass to the Licensor.

**4.4** Licensor agrees to a maximum eight (8) hour turnaround from the point the call is made on all repairs not requiring parts ordering and a maximum ten (10) working days on all other repairs. If after two (2) days the item has not been repaired, a compatible loaner unit will be provided by Licensor at no cost to Licensee.

**4.5** Licensor agrees to provide preventive maintenance based on the specific needs of the equipment during normal business hours and at intervals specified in IFB No. 4419. and Licensor's Proposal as accepted by the State in response thereto. Preventive maintenance may be performed concurrently with remedial maintenance activity. Licensor must record all activities related to preventive maintenance on a log to be retained on-site.

**4.6** The parties understand and agree that Licensee reserves the right to add other equipment to be maintained or to cancel maintenance on all or part of the equipment, as Licensee deems necessary.

**4.7** The parties understand and agree that this Agreement does not cover the following: print heads (normal wear), batteries, ribbons, and all disposable parts; damage to equipment caused by Licensee's abuse or neglect; damage caused by an act of God (flood, earthquake, lightning, etc.); loss due to fire or theft; cost of repair or maintenance of any kind which results from a breach of the terms of this Agreement by the Licensee; neglect, misuse, alterations, or deviation from intended machine use; maintenance or repair of the machine performed by persons other than Licensor; or maintenance or removal of alterations or attachments.

## **ARTICLE 5 SCOPE OF LICENSE AND HOSTING SERVICES**

**5.1** Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive and non-transferable license to access the Software over the Internet and to use it for Licensee's business operations and use it on the Licensor's host server for the initial term of the Agreement and any subsequent renewal hosting terms in accordance with, and subject to, the terms and conditions set forth in this Agreement. Licensee and Active Users are granted access to the Software, Products and Services twenty-four (24) hours a day, seven (7) days a week, three hundred and sixty-five (365) days a year, subject to regularly scheduled maintenance and required repairs. The terms and conditions of this Agreement will apply to any Enhancements or additional Software Products Licensee may procure from Licensor.



**5.2** Licensor will provide Licensee storage space on and access to Licensor's Software via the Internet and provide Internet access to the Software to the Active Users through Licensor's site ("ASP Services").

**5.3** In connection with the ASP Services, Licensor will provide and maintain all Software and hardware, including, but not limited to, the server hardware and software, telecommunications hardware and software, security hardware and software and other software that is reasonably necessary to operate and maintain the Software.

**5.4** The Software will be accessible at least ninety nine percent (99%) of the time, twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of the ASP Services due to causes beyond the control of Licensor. In the event that MDHS or an Active User is unable to achieve the 99% application availability during any given month, excluding scheduled maintenance, required repairs, and unavailability due to causes beyond the control of Licensor, the Licensor shall reimburse MDHS twenty five percent (25%) of the monthly ASP hosting fees for each twenty-four (24) hour day during which there were any incidents of unavailability. Licensor shall maintain the server at a secured location with restricted access.

**5.5** Licensor shall provide the Licensee with its standard managed firewall service, which shall enable secure delivery of Licensor's application services using fully redundant hardware-based firewalls. Licensor's managed firewall service will be available twenty-four (24) hours a day, seven (7) days a week.

**5.6** The use of the Software by Active Users will be governed solely by the terms and conditions of this Agreement.

**5.7** Licensor acknowledges that the Content is and shall remain the sole and exclusive property of Licensee. Further, Licensor acknowledges that the Content may contain valuable trade secrets of Licensee and Licensor agrees to maintain the confidentiality of the Content and shall not make the Content publicly available except as may be necessary in performing the ASP Services.

**5.8** Licensee acknowledges that the Software Products shall remain the exclusive property of Licensor. Licensee agrees that except as noted herein, it will not otherwise copy, translate, modify, adapt, decompile, disassemble or reverse engineer any of the Software without the prior written consent of Licensor.

## **ARTICLE 6 DELIVERY; RISK OF LOSS, AND ACCEPTANCE**

**6.1** Licensor shall deliver, install, and make available the Software and Documentation to the Licensor's hosting environment, except as otherwise specified, and pursuant to the delivery schedule mutually agreed to by the parties.

**6.2** Licensor shall assume and bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout Licensor's possession thereof.

**6.3** MDHS shall have thirty (30) calendar days after the Available Date to evaluate and conduct the final acceptance testing of the Software to confirm that it performs without any defects and performs in accordance with the requirements of this Agreement. MDHS shall immediately

thereafter notify Licensor of any defects in the Software, which must be corrected. Thereafter, Licensor shall have ten (10) business days in which to either repair or replace the defective Software unless both parties agree to extend this period, all at Licensor's expense. In the event Licensor is unable to repair or replace the Software within this ten (10) day period, MDHS may terminate this Agreement pursuant to the Termination Article herein.

## **ARTICLE 7 CONSIDERATION AND METHOD OF PAYMENT**

**7.1** The total compensation to be paid to the Licensor by MDHS for all development, maintenance and ASP services, customizations, products, travel, performances and expenses under this Agreement shall not exceed the specified sum of **\$TOTAL COMPENSATION**, and shall be payable as set forth in the Payment Schedule attached hereto as Exhibit A.

**7.2** Licensor shall submit invoices with the appropriate documentation to MDHS monthly for any month in which ASP services and/or other Services are rendered. Licensor shall submit invoices and supporting documentation to MDHS electronically during the term of this Agreement using the processes and procedures identified by the State. MDHS agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by MDHS within forty-five (45) days of receipt of the invoice. Licensor understands and agrees that MDHS is exempt from the payment of taxes. All payments shall be in United States currency. Payments by state agencies using Mississippi's Accountability System for Government Information and Collaboration (MAGIC) shall be made and remittance information provided electronically as directed by the State. The payments by these agencies shall be deposited into the bank account of the Licensor's choice. No payment, including final payment, shall be construed as acceptance of defective products or incomplete work, and the Licensor shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement."

**7.3** Acceptance by the Licensor of the last payment due from MDHS under this Agreement shall operate as a release of all claims for money against the State by the Licensor and any subcontractors or other persons supplying labor or materials used in the performance of the work under this Agreement.

## **ARTICLE 8 WARRANTY**

**8.1** Licensor represents and warrants that it has the right to license the Products provided under this Agreement.

**8.2** Licensor represents and warrants that the Products provided by Licensor shall meet or exceed the minimum specifications set forth in IFB No. 4419 and Licensor's Proposal, as accepted by the State, in response thereto.

**8.3** During the term of this Agreement, the Licensor represents and warrants that all deliverables shall be free from any defect, deficiency, faultiness, imperfection, inadequacy, incompleteness or other condition (collectively referred to herein as "Defect") which would render any such deliverable inoperable in any way or which would prevent full performance in accordance with this Agreement. This warranty includes, without limitation, correction of errors, design deficiencies, performance deficiencies, and incorrect or defective Documentation, including those found during acceptance testing, implementation, and the warranty period. Acceptance testing shall not in any way relieve the Licensor of its responsibilities to correct any

Defect during the warranty period. The Licensor shall repair any Defect at no cost to the State within ten (10) business days of receiving notice of the Defect from the State, unless MDHS consents in writing to a longer period of repair time. In the event Licensor is unable to repair or replace the Software within the mutually agreed upon time frame after receipt of notice of the Defect, MDHS shall be entitled to a full refund of fees paid and shall have the right to terminate this Agreement in whole or in part as provided for in the Termination Article herein. Licensee's rights hereunder are in addition to any other rights Licensee may have.

**8.4** During the term of this Agreement, the Licensor represents and warrants that its Services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such Services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, Licensor shall perform the Services again, at no cost to the State, or if Licensor is unable to perform the Services as warranted, Licensor shall reimburse the State the fees paid to Licensor for the unsatisfactory Services.

**8.5** Licensor represents and warrants that neither the Software, nor Enhancements shall contain a disabling code, lockup program or device. Licensor further agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Licensee's licensed use of the Software, or Enhancements and/or which would restrict Licensee from accessing its data files or in any way interfere with the transaction of Licensee's business. For any breach of this warranty, Licensor at its expense shall, within ten (10) business days after receipt of notification of the breach, deliver Products to Licensee that are free of such disabling code, lockup program or device.

**8.6** Licensor represents and warrants that neither the Software, nor Enhancements delivered to Licensee contain a computer virus. For purposes of this provision, a computer virus shall be defined as code intentionally inserted in the Software or Enhancements that will damage or destroy Licensee's applications or data. For any breach of this warranty, Licensor at its expense shall, within five (5) business days after receipt of notification of the breach, deliver Products to Licensee that are free of any virus, and shall be responsible for repairing, at Licensor's expense, any and all damage done by the virus to Licensee's site.

**8.7** The Licensor represents and warrants that, upon completion of the project, the Licensor, and all subcontractors, if any, shall convey to MDHS copies of all interim reports, cost records, data collection forms, and any working papers that support the final acceptance.

**8.8** Licensor represents and warrants that it has obtained all necessary rights to permit use of the graphics on the site and that the Licensor shall provide MDHS with evidentiary proof of graphic licenses and releases. Further, the Licensor represents and warrants that all Licensor-supplied graphics and content contains no scandalous or libelous material.

**8.9** The Licensor represents and warrants that the deliverables provided to MDHS under this Agreement, and their use by Active Users, will not infringe or constitute an infringement of any copyright, patent, trademark, servicemark, trade secret or other proprietary right of any person or entity. Licensee agrees that it will promptly notify Licensor in writing of any such claim or action of which it has knowledge, and that it will cooperate fully in the defense and investigation of the claim by supplying Licensor all relevant information currently available and in its possession, all



at Licensors expense. Licensor shall, to the extent authorized by Mississippi law, have sole control over the defense or settlement of any such claim or action. Licensor, at its own expense, shall defend or settle any and all infringement actions filed against Licensor or the State which involve the deliverables or other items provided under this Agreement and shall pay all settlements, as well as all costs, attorney fees, damages and judgment finally awarded against the State. If, in any such suit arising from such claim, the continued use of the items for the purpose intended is enjoined or threatened to be enjoined by any court of competent jurisdiction, Licensor shall, at its expense: (a) procure for the State the right to continue using such items, or (b) modify or replace them with non-infringing items with equivalent functionality, or, to the extent (a) or (b) cannot be done despite Licensor's commercially reasonable efforts, (c) refund to the State the fees previously paid by the State for the infringing Products. Said refund shall be paid within ten (10) business days of notice to the State to discontinue said use. In addition to the foregoing, the Licensor shall indemnify the State in accordance with the provisions of Article 18 herein.

**8.10** Licensor represents and warrants that the host site provided by the Licensor shall be reasonably expandable and scalable so MDHS can add and support additional business functions and users over time. It is understood and agreed that any standard revisions, enhancements, improvements, and upgrades to the licensed Software and host site equipment during the term of this Agreement, including operating system, database management system, and other software, shall be provided by Licensor to MDHS at no additional cost to MDHS.

**8.11** Licensor represents and warrants that it presently has and will continue to maintain, at its own expense, throughout the term of this Agreement, valid licenses for all software, trademarks, service marks, patents and copyrighted material and any other proprietary information of a third party that it will deploy in support of all products Licensor uses in the performance of this Agreement.

**8.12** Licensor represents and warrants that, to the extent applicable, it will ensure its compliance with the Mississippi Employment Protection Act, Miss. Code Ann. section 71-11-1, et seq. and any breach of Mississippi Employment Protection Act may subject Contractor to the consequences set forth under Miss. Code Ann. § 71-11-3.

**8.13** Licensor represents and warrants that the system provided pursuant to this Agreement will pass both internal security audits and independent security audits. For any breach of the preceding warranty at any time during which the system is covered by warranty and/or software support, Licensor shall, at its own expense and at no cost to Licensee, remediate any defect, anomaly or security vulnerability in the system by repairing and/or replacing any and all components of the system necessary in order for the system to be secure.

**8.14** Licensor represents and warrants that no official or employee of Licensee or of ITS, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in this Agreement. The Licensor warrants that it has removed any material conflict of interest prior to the signing of this Agreement, and that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its responsibilities under this Agreement. The Licensor also warrants that in the performance of this Agreement no person having any such known interests shall be employed.

**8.15** The Licensor represents and warrants that no elected or appointed officer or other employee of the State of Mississippi, nor any member of or delegate to Congress has or shall benefit financially or materially from this Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Licensor, terminate the right of the Licensor to proceed under this Agreement if it is found, after notice and hearing by the ITS Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Licensor to any officer or employee of the State of Mississippi with a view toward securing this Agreement or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the ITS Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event this Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Licensor as it would pursue in the event of a breach of contract by the Licensor, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

#### **ARTICLE 9 EMPLOYMENT STATUS**

**9.1** Licensor shall, during the entire term of this Agreement, be construed to be an independent contractor. Nothing in this Agreement is intended to nor shall be construed to create an employer-employee relationship, or a joint venture relationship.

**9.2** Licensor represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of Licensee.

**9.3** Any person assigned by Licensor to perform the Services hereunder shall be the employee of Licensor, who shall have the sole right to hire and discharge its employee. Licensee may, however, direct Licensor to replace any of its employees under this Agreement.

**9.4** Licensor shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Licensor nor employees of Licensor are entitled to state retirement or leave benefits.

#### **ARTICLE 10 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS**

Licensor will be responsible for the behavior of all its employees and subcontractors while on the premises of any Licensee location. Any employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of the staff and/or students will be asked to leave the premises and may be suspended from further work on the premises. All Licensor employees and subcontractors who will be working at such locations shall be covered by Licensor's comprehensive general liability insurance policy.

#### **ARTICLE 11 MODIFICATION OR RENEGOTIATION**

This Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the

Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Agreement necessary.

## **ARTICLE 12 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

**12.1** In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Licensor represents all contractors, third parties, and/or subcontractors Licensor has assembled for this project. The Licensee is required to negotiate only with Licensor, as Licensor's commitments are binding on all proposed contractors, third parties, and subcontractors.

**12.2** Neither party may assign or otherwise transfer this Agreement or its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. This Agreement shall be binding upon the parties' respective successors and assigns.

**12.3** Licensor must obtain the written approval of MDHS before subcontracting any portion of this Agreement. No such approval by MDHS of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of MDHS in addition to the total fixed price agreed upon in this Agreement. All subcontracts shall incorporate the terms of this Agreement and shall be subject to the terms and conditions of this Agreement and to any conditions of approval that MDHS may deem necessary.

**12.4** Licensor represents and warrants that any subcontract agreement Licensor enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Licensee, and that the subcontractor acknowledges that no privity of contract exists between the Licensee and the subcontractor and that the Licensor is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Licensor. The Licensor shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Licensor's failure to pay any and all amounts due by Licensor to any subcontractor, third party licensor, materialman, laborer or the like.

**12.5** All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between the Licensor and the Licensee, where such dispute affects the subcontract.

## **ARTICLE 13 AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of MDHS to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Agreement. If the funds anticipated for the fulfillment of this Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to MDHS for the payments or performance due under this Agreement, MDHS shall have the right to immediately terminate this Agreement, in whole or in part, without damage, penalty, cost or expense to MDHS of any kind whatsoever, except for payment for work completed by Licensor and accepted by MDHS prior to termination. The effective date of

termination shall be as specified in the notice of termination. MDHS shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement.

#### **ARTICLE 14 TERMINATION**

**14.1** Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) upon the mutual, written agreement of the parties; (b) If either party fails to comply with the terms of this Agreement, the non-defaulting party may terminate the Agreement upon the giving of thirty (30) calendar days written notice unless the breach is cured within said thirty (30) day period; (c) MDHS may terminate the Agreement in whole or in part without the assessment of any penalties upon ten (10) calendar days written notice to Licensor if Licensor becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) MDHS may terminate this Agreement in whole or in part for any reason without the assessment of any penalties after giving thirty (30) calendar days written notice specifying the effective date thereof to Licensor. The provisions of this Article 13 do not limit either party's right to pursue any other remedy available at law or in equity.

**14.2** In the event MDHS terminates this Agreement, Licensor shall receive just and equitable compensation for Services rendered by Licensor and accepted by MDHS prior to the termination. Further, upon termination of this Agreement, Licensor shall refund any and all applicable unexpended prorated annual ASP fees previously paid by Licensee.

**14.3** In the event that this Agreement's Scope of Services requires customization and/or implementation of software for which Licensee is required to pay a license fee upon execution of this Agreement, and if Licensor fails to complete said customization and/or implementation as required thereby precluding Licensee's use of the subject software, Licensor shall refund in full the price paid by Licensee to Licensor upon termination of this Agreement.

#### **ARTICLE 15 GOVERNING LAW**

This Agreement shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Licensor expressly agrees that under no circumstances shall the State be obligated to pay an attorney's fee, prejudgment interest or the cost of legal action to Licensor. Further, nothing in this Agreement shall affect any statutory rights the parties may have that cannot be waived or limited by contract.

#### **ARTICLE 16 WAIVER**

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Agreement. A waiver by either party, to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of that party.

#### **ARTICLE 17 SEVERABILITY**

If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the State's purpose

for entering into this Agreement can be fully achieved by the remaining portions of the Agreement that have not been severed.

#### **ARTICLE 18 CAPTIONS**

The captions or headings in this Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or Article in this Agreement.

#### **ARTICLE 19 HOLD HARMLESS**

To the fullest extent allowed by law, Licensor shall indemnify, defend, save and hold harmless, protect and exonerate Licensee, ITS and the State, its Board Members, officers, employees, agents and representatives from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever, including without limitation, court costs, investigative fees and expenses, attorney fees and claims for damages arising out of or caused by Licensor and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform this Agreement.

#### **ARTICLE 20 THIRD PARTY ACTION NOTIFICATION**

Licensor shall notify MDHS in writing within five (5) business days of Licensor filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Licensor or MDHS by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Licensor's performance under this Agreement. Failure of the Licensor to provide such written notice to MDHS shall be considered a material breach of this Agreement and MDHS may, at its sole discretion, pursue its rights as set forth in the Termination Article herein and any other rights and remedies it may have at law or in equity.

#### **ARTICLE 21 AUTHORITY TO CONTRACT**

Licensor warrants that it is a validly organized business with valid authority to enter into this Agreement; that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

#### **ARTICLE 22 NOTICE**

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: David C. Johnson, Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Mississippi Department of Human Services' address for notice is: Mark Allen, Chief Information Officer, Mississippi Department of Human Services, 200 South Lamar Street, Jackson, Mississippi 39201. The Licensor's address for notice is: **VENDOR NOTICE INFORMATION**. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

#### **ARTICLE 23 RECORD RETENTION AND ACCESS TO RECORDS**



Licensor shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Agreement. The Licensee, ITS, any state or federal agency authorized to audit Licensee, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to this Agreement and to any of the Licensor's proposals, books, documents, papers and/or records that are pertinent to this Agreement to make audits, copies, examinations, excerpts and transcriptions at the State's or Licensor's office as applicable where such records are kept during normal business hours. All records relating to this Agreement shall be retained by the Licensor for three (3) years from the date of receipt of final payment under this Agreement. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

#### **ARTICLE 24 INSURANCE**

Licensor represents that it will maintain workers' compensation insurance as prescribed by law which shall inure to the benefit of Licensor's personnel, as well as comprehensive general liability and employee fidelity bond insurance. Licensor will, upon request, furnish with a certificate of conformity providing the aforesaid coverage.

#### **ARTICLE 25 DISPUTES**

Any dispute concerning a question of fact under this Agreement which is not disposed of by agreement of the Licensor and Licensee, shall be decided by the Executive Director of ITS or his/her designee. This decision shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute a breach under the terms of this Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

#### **ARTICLE 26 COMPLIANCE WITH LAWS**

**26.1** Licensor shall comply with, and all activities under this Agreement shall be subject to, all Licensee policies and procedures which Licensor has received copies of, and all applicable federal, state, and local laws, regulations, policies and procedures as now existing and as may be amended or modified. Specifically, but not limited to, Licensor shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, national origin or disability. Further, if applicable, Licensor shall comply with the provisions of the Davis-Bacon Act including, but not limited to, the wages, recordkeeping, reporting and notice requirements set forth therein.

**26.2** Licensor represents and warrants that it will comply with the state's data breach notification laws codified at Section 75-24-29 of the Mississippi Code Annotated (Supp. 2012). Further, to the extent applicable, Licensor represents and warrants that it will comply with the applicable provisions of the HIPAA Privacy Rule and Security Regulations (45 CFR Parts 160, 162 and 164) ("Privacy Rule" and "Security Regulations", individually; or "Privacy and Security Regulations", collectively); and the provisions of the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (the "HITECH Act").

#### **ARTICLE 27 CONFLICT OF INTEREST**

Licensor shall notify MDHS of any potential conflict of interest resulting from the provision of services to other customers. If such conflict cannot be resolved to MDHS' satisfaction, MDHS reserves the right to terminate this Agreement.

#### **ARTICLE 28 SOVEREIGN IMMUNITY**

By entering into this Agreement with Licensor, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

#### **ARTICLE 29 CONFIDENTIAL INFORMATION**

**29.1** Licensor shall treat all Licensee data and information to which it has access by its performance under this Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of Licensee. In the event that Licensor receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a validly issued judicial order requiring divulgence of such information, Licensor shall promptly inform Licensee and thereafter respond in conformity with such court order to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of this Agreement and shall continue in full force and effect and shall be binding upon the Licensor and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Agreement on behalf of, or under the rights of the Licensor following any termination or completion of this Agreement.

**29.2** The parties understand and agree that this Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to Licensor. ITS will provide third party notice to Licensor of any requests received by ITS for documents marked confidential in Licensor's response to a IFB or LOC (if applicable) so as to allow Licensor the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

**29.3** The parties understand and agree that pursuant to §25-61-9(7) of the Mississippi Code of 1972, as amended, the contract provisions specifying the commodities purchased or the services provided; the price to be paid; and the term of this Agreement shall not be deemed confidential information.

#### **ARTICLE 30 EFFECT OF SIGNATURE**

Each person signing this Agreement represents that he or she has read the Agreement in its entirety, understands its terms, is duly authorized to execute this Agreement on behalf of the parties and agrees to be bound by the terms contained herein. Accordingly, this Agreement shall not be construed or interpreted in favor of or against the State or the Licensor on the basis of draftsmanship or preparation hereof.

#### **ARTICLE 31 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS**

All Content collected by the Software shall be the property of Licensee. Licensor may use the Content only in the performance of this Agreement, unless otherwise agreed upon between the parties. Licensee acknowledges that the Products shall remain the exclusive property of Licensor and are excluded from this Article.

#### **ARTICLE 32 NON-SOLICITATION OF EMPLOYEES**

Licensor agrees not to employ or to solicit for employment, directly or indirectly, any of MDHS' employees until at least one (1) year after the expiration/termination of this Agreement unless

mutually agreed to the contrary in writing by MDHS and the Licensor and provided that such an agreement between these two entities is not a violation of the laws of the State of Mississippi or the federal government.

### **ARTICLE 33 ENTIRE AGREEMENT**

**33.1** This contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto, including all terms of any "shrink-wrap", "click-wrap" or "browse-wrap" license of the Software. The IFB No. 4419, and Licensor's Proposal, as accepted by the State, in response thereto are hereby incorporated into and made a part of this Agreement.

**33.2** The contract made by and between the parties hereto shall consist of, and precedence is hereby established by the order of the following:

- A. This Agreement signed by the parties hereto;
- B. Any exhibits attached to this Agreement;
- C. IFB No. 4419 and written addenda, and
- D. Licensor's Proposal, as accepted by the State, in response to IFB No.4419.

**33.3** The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the Licensor. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document ("A. This Agreement") and the lowest document is listed last ("D. Licensor's Proposal").

### **ARTICLE 34 STATE PROPERTY**

Licensor shall be responsible for the proper custody of any Licensee-owned property furnished for Licensor's use in connection with Services performed pursuant to this Agreement. Licensor shall reimburse the Licensee for any loss or damage, normal wear and tear excepted.

### **ARTICLE 35 SURVIVAL**

Articles 7, 14, 18, 22, 27, 28, 30, 31, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

### **ARTICLE 36 DEBARMENT AND SUSPENSION CERTIFICATION**

Licensor certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of



records, making false statements or receiving stolen property; (c) are presently indicted or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

#### **ARTICLE 37 SPECIAL TERMS AND CONDITIONS**

It is understood and agreed by the parties to this Agreement that there are no special terms and conditions except as specifically provided in this Agreement.

#### **ARTICLE 38 STATUTORY AUTHORITY**

By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the executive director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software and services. The parties understand and agree that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of the Licensee's or Licensor's contractual obligations, financial or otherwise, contained within this Agreement. The parties further acknowledge that ITS is not responsible for ensuring compliance with any guidelines, conditions, or requirements mandated by Licensee's funding source.

#### **ARTICLE 39 COMPLIANCE WITH ENTERPRISE SECURITY POLICY**

Licensor and Licensee understand and agree that all products and services provided by Licensor under this Agreement must allow Licensee to be and remain in compliance with the State of Mississippi's Enterprise Security Policy. The parties understand and agree that the State's Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution. The State reserves the right to introduce a new policy during the term of this Agreement and require the Licensor to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

#### **ARTICLE 40 COMPLIANCE WITH ENTERPRISE CLOUD AND OFFSITE HOSTING SECURITY**

If applicable, Licensor and Licensee understand and agree that all products and services provided by the Licensor under this Agreement must allow Licensee to be and remain in compliance with the State of Mississippi's Enterprise Cloud and Offsite Hosting Security Policy. The parties understand and agree that the State's Enterprise Cloud and Offsite Hosting Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution and augments the Enterprise Security Policy. The State reserves the right to introduce a new policy during the term of this Agreement and require the Licensor to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

#### **ARTICLE 41 SOFTWARE SUPPORT AND MAINTENANCE**

**41.1** As part of the Software support and maintenance services, Licensor will maintain the Products in an operable condition according to the specifications contained in the technical manuals and as outlined in the Licensor's Proposal in response thereto. Licensor shall provide

Licensee with Enhancements to the Software as they are made generally available from time to time. Notwithstanding any other provisions of this Agreement, Licensor shall provide support only with respect to the then-current generally available version of the Software.

**41.2** Licensor shall also provide unlimited email and toll-free telephone technical support in the operation of the Software Products twenty-four (24) hours a day, seven (7) days a week. Licensor shall respond by telephone within one (1) hour to requests for support services. Licensee shall be given priority placement in the support queue for all system locking situations or problems claimed by Licensee to be a mission critical process. Upon receipt of Licensee's call, Licensor will (a) create an error report, (b) assign a severity level and (c) attempt to resolve the Software problem in accordance with the procedures and processes for problem resolution detailed below. It is understood by the parties that the Licensee and Licensor must mutually agree on whether an error is classified as a Severity Level 1, 2, or 3 error.

**41.3** Severity Level 1 implies that the Software is not functioning. Some examples of Severity Level 1 Software problems are as follows: (a) Software is down and will not restart; (b) Software is not able to communicate with external systems; and (c) Software is generating a data corruption condition. Licensor shall resolve Severity Level 1 Software Errors within one (1) business day, or within a mutually agreed upon time frame. When a Severity Level 1 Software Error is reported, Licensor will assign resources necessary to correct the Software Error. If access to the Software is required, Licensee will provide a contact available to Licensor and access to Licensee's system and other software for the duration of the error correction procedures.

**41.4** Severity Level 2 implies that (a) an essential function does not work as documented, or (b) testing and usage can continue but the task cannot be completed, and no workarounds exist. Licensor shall assign at least one (1) dedicated person to the problem and shall resolve Severity Level 2 Software Errors within two (2) business days, or within a mutually agreed upon time frame.

**41.5** Severity Level 3 implies a Software Error such that implementations of function do not match specification and/or technical Documentation, and a workaround may exist. Licensor shall resolve Severity Level 3 Software Errors within ten (10) business days, or within a mutually agreed upon time frame.

## **ARTICLE 42 FORCE MAJEURE**

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war or terrorism, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the Licensor shall notify the Licensee immediately in writing of the cause of its inability to perform; how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate this Agreement.

## **ARTICLE 43 TRANSPARENCY**

In accordance with the Mississippi Accountability and Transparency Act of 2008, §27-104-151, et seq., of the Mississippi Code of 1972, as Amended, the American Accountability and

Transparency Act of 2009 (P.L. 111-5), where applicable, and §31-7-13 of the Mississippi Code of 1972, as amended, where applicable, a fully executed copy of this Agreement and any subsequent amendments and change orders shall be posted to the State of Mississippi's accountability website at: <https://www.transparency.ms.gov>

For the faithful performance of the terms of this Agreement, the parties hereto have caused this Agreement to be executed by their undersigned authorized representatives.

State of Mississippi, Department of  
Information Technology Services, on  
behalf of Mississippi Department of Human  
Services

**VENDOR NAME**

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

Printed Name: David C. Johnson

Printed Name: \_\_\_\_\_

Title: Executive Director

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A  
PAYMENT SCHEDULE**